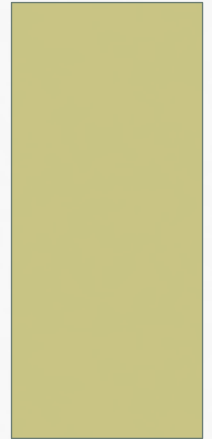


# SEAN M. FREDRICKS OHNSTAD TWICHELL, P.C.

WATER DRAINAGE COMMITTEE  
PROJECT TIMELINES AND APPEALS





- **Water Resource District Project Timelines**
- **For New Assessment Projects**
  - **Chapter 61-21 of the North Dakota Century Code**
    - **The “Old” Chapter**
  - **Chapter 61-16.1 of the Century Code**
    - **Enacted in 1981, when WRDs created**
  - **Most transparent and democratic process of all ND poli subs (up-front vote as opposed to “protest” process after-the-fact)**



- **Timeline Differences Between the Chapters**
  - **Chapter 61-16.1 is a lengthier process**
    - **More landowner safeguards**



- **Both Chapters Require:**
  - **Pre-Vote and Vote:**
    - **WRD Approval of “Project” & Assessment List**
    - **Set ‘Project Hearing’**
    - **Mailings and Publications**
    - **‘Project Hearing’**
    - **Voting Period**
    - **Vote Certification, Second Set of Mailings and Publications, and ‘Assessment Hearings’**



- **Both Chapters Require:**
  - **Post-Vote:**
    - **Certify Vote (if successful vote)**
    - **Set ‘Assessment Hearing’**
    - **Second Set of Mailings and Publications**
    - **‘Assessment Hearing’**
    - **Assessment Appeals**
    - **Approve Final List**



- **Chapter 61-21 Timeline:**
  - **Statutory Voting Process is approximately two months**
  - **Requires Petition under ND Cent. Code § 61-21-10**
    - “...at least six property owners or a majority of the landowners within the proposed district”
    - WRD may require a bond under ND Cent. Code § 61-21-11



- **Chapter 61-16.1 Timeline:**
  - **Statutory Voting Process is approximately four months**
  - **WRD may proceed with or without Petition under ND Cent. Code § 61-16.1-15**
  - **WRD may require a bond**



## • **Notice and Publication Differences**

- **Under 61-21, only 10 days' notice required from the date of publication of the NOTICE OF HEARING and the hearing (for both 'project hearing' and 'assessment hearing')**
- **Only a single publication in Official County Newspaper required**
- **The vote concludes in as few as 10 days following the 'project hearing' (the WRD has discretion in terms of the voting period, but no less than 10 days).**





- **Notice and Publication Differences**

- **Under 61-16.1, lengthier and different procedures for the ‘project hearing’ and ‘assessment hearing’**
- **For ‘project hearing’:**
  - **20 days’ notice required from the date of mailing/first publication of the NOTICE OF HEARING and the hearing**
  - **Two publications in Official County Newspaper required**
  - **The vote concludes 30 days following the ‘project hearing’ (this period is mandated by statute, no discretion)**



- **Notice and Publication Differences**

- **Additional and lengthier notice requirements for ‘assessment hearing’ under 61-16.1**
- **30 days’ notice required from the date of mailing/first publication of the NOTICE OF HEARING and the hearing**
- **Three publications in Official County Newspaper required**



- **Post-Vote Assessment Limitations**
  - **Chapter 61-16.1 contains a statutory safeguard for landowners, with a 20% cap on the amount WRDs may assess landowners above the amount of the vote**



- **Appeals**
  - **Situations/Types of Appeals:**
    - **All Decisions of WRDs**
    - **Drainage and Dike/Dam Complaints**
    - **Assessment District Decisions of WRDs**



- **Situation One:**
  - **Any decision of a WRD (or any other political sub)**
    - **All decisions are subject to appeal to ND District Court**
    - **N.D. Cent. Code § 28-34-01 – File within 30 days of Decision**
    - **WRDs and projects need a time certain for appeals to expire; bond issues, construction contracts, and other items impacted**
    - **District Court will review “record” of WRD**
    - **Arbitrary & Capricious Standard**



- **Situation Two:**

- **Complaints:**

- **Decision of a WRD in response to a drainage complaint (illegal/unpermitted drainage under ND Cent. Code §§ 61-32-07 and 61-32-08)**
    - **Decision of a WRD in response to a dam/dike complaint (illegal/unpermitted dam or dike under ND Cent. Code § 61-16.1-53 and 61-16.1-53.1)**
    - **Appeal to Dept. of Water Resources (30 days from receipt of notice)**
    - **Appeal to District Court**



- **Situation Three:**
- **Assessment District Appeals (Project & Assessment Appeals)**
  - **Project Appeals**
  - **Following a successful vote, the WRD must publish a NOTICE OF ENTRY OF ORDER in the official county newspaper (61-21-17 and 61-16.1-19)**
  - **Landowners may appeal a WRD Order establishing a project to district court in both Chapters, under §§ 61-16.1-54 and 28-34-01:**
    - **Within 30 days of the date of the Board's Order under 61-21-18**
    - **Within 30 days of the date of publication of NOTICE OF ENTRY OF ORDER under 61-16.1-19**



- **Appeals**

- **Assessment Appeals - Three Options (Both Chapters)**

- **Option One:** After the ‘assessment hearing,’ group of landowners can appeal the project and/or assessments to the Department of Water Resources; must file petition within 10 days of the date of the hearing under both Chapters
  - **Chapter 61-21:** Landowners with combined total over 50% of the possible votes
  - **Chapter 61-16.1:** Landowners with combined total 20% of the possible votes





- **Assessment Appeals**

- **Option One (Cont.)**

- Under both Chapters, the Department may review assessments, project location, and project design
  - If the Department determines “assessments were not made equitably,” the Department may “correct the assessments”
  - If the Department concludes “the drain has been improperly located or designed, the department may order a relocation and redesign. The relocation and redesign must be followed in the construction of the proposed drain.”



- **Assessment Appeals**

- **Option Two**

- Under both Chapters, after the ‘assessment hearing,’ *any landowner* can appeal to the Department within 10 days of the date of the hearing; this appeal is limited in scope
- On appeal, the Department will only determine if the landowner will receive any benefit at all from the project (the Department will not review the amount of benefit, efficacy of project design, etc.).



- **Assessment Appeals**

- **Option Three**

- After the WRD approves the final assessment list, under N.D. Cent. Code §§ 61-16.1-54 and 28-34-01, any aggrieved party may appeal the WRD's decision to district court within 30 days of the date of the decision
    - Available under both Chapters



# QUESTIONS?

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